



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

**AMENDED
DECISION**

MOP/171661

PRELIMINARY RECITALS

Pursuant to a petition filed January 25, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marquette County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on February 23, 2016. The Hearing for this matter was held at the same time as the Hearing for the following closely related matter concerning the same petitioner: FOP-171660.

A *Decision* dated March 17, 2016 was issued in this matter. That March 17th Decision concluded that it was not correct to establish 2 Claims against petitioner for alleged overpayments of BadgerCare Plus MA ["BC+"] for the time period September 1, 2014 to December 31, 2015 in the total amount of \$6,570.00.

On March 25, 2016 the Division of Hearings and Appeals ["DHA"] received, via U.S. Mail postmarked March 23, 2016, a letter from the County dated March 23, 2016 requesting rehearing in this matter. In that letter the County explained that the overpayments were due to the fact that petitioner's 2 minor children were not eligible for BC+ (not due to petitioner's ineligibility). This was not made clear at the time of the February 23, 2016 Hearing in this matter.

When requested by the petitioner or the agency within 30 days of the date of a *Decision*, DHA may amend or vacate a decision for the purpose of correcting either plain or administrative errors or as altered conditions may require. Wis. Admin. Code § HA 3.10(1) (February 2013). Therefore, the *Decision* in this matter dated March 17, 2016 is VACATED and is replaced by this *Amended Decision*.

The issue for determination is whether it was correct to establish the following 2 Claims against petitioner for alleged overpayments of BadgerCare Plus MA ["BC+"] for the time period September 1, 2014 to December 31, 2015 in the total amount of \$6,570.00:

- (I) Claim Number [REDACTED]; September 1, 2014 to April 30, 2015; \$3,804.00; and,
- (II) Claim Number [REDACTED]; May 1, 2015 to December 31, 2015; \$2,766.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED] [REDACTED], ESS Worker
Marquette County Department of Human Services
480 Underwood Avenue
PO Box 99
Montello, WI 53949-0099

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 43 years old) is a resident of Marquette County, Wisconsin.
2. The County established the following 2 Claims against petitioner for alleged overpayments of BC+ for the time period September 1, 2014 to December 31, 2015 in the total amount of \$6,570.00:
 - (I) Claim Number [REDACTED]; September 1, 2014 to April 30, 2015; \$3,804.00; and,
 - (II) Claim Number [REDACTED]; May 1, 2015 to December 31, 2015; \$2,766.00.
3. During the time period of the alleged BC+ overpayments listed in *Finding of Fact #2*, above, petitioner's 2 children (son "KS" born in 1998; and, daughter "SS" born in 2001) were considered as being cared for by petitioner at least 40% of the time and petitioner received BC+ for them.
4. During the time period of the alleged BC+ overpayments listed in *Finding of Fact #2*, above, petitioner and her 2 children (KS and SS) did not live together in the same home and petitioner did not care for them at least 40% of the time; petitioner failed to report this; petitioner should not have received BC+ for her children during the time periods in question.

DISCUSSION

An overpayment of BC+ benefits may be recovered only in the following 3 circumstances:

A. A misstatement or omission of fact by a person supplying information in an application for benefits;

B. The failure of an MA or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits; or,

C. The failure of an MA or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. § 49.497(1)(a) (2013-14); See also, *Medicaid Eligibility Handbook* ["MEH"] 22.2.1; BEM/DWS Operations Memo, No: 05-39, Date: 09/29/2005; and, BEM/DWS Operations Memo, No: 06-10, Date: 02/09/2006.

Children must live together with a parent at least 40% of the time in order to be part of the same BC+ Assistance Group ["AG"]. *BadgerCare Plus Eligibility Handbook* ["BC+ Handbook"] 2.2 & 2.4.

The overpayments in this matter arose from the fact that petitioner's 2 children were included in her BC+ AG when they did not live with petitioner and were not cared for by petitioner at least 40% of the time. This matter must be decided by a preponderance of the credible evidence in the record of this matter. Wis. Admin. Code § HA 3.09(4) (February 2013).

The preponderance of the credible evidence in the record of this matter is that petitioner and her 2 children did not live together during the time period in question and that petitioner did not provide care for them at least 40% of the time. This includes testimony by petitioner's sister (who states that petitioner asked her to lie), statements by 3 of petitioner's neighbors, and school records.

There is a statement by petitioner that her children lived with her. Petitioner testified that her children did stay at other places at times and that KS did not move out until his 18th birthday. Petitioner also testified that she has been mentally unstable for the last 2 years. Give the disjointed nature of her testimony, her demeanor while testifying, her admitted mental instability, and the other evidence in the record of this matter petitioner's testimony is not credible.

There is a statement by KS that he lived with petitioner and visited his girlfriend. There is a statement by another of petitioner's daughters ["KMS" born 1996] that KS and SS lived with petitioner. Finally, there is an initial statement from petitioner's landlord that KS and SS lived with petitioner -- but the landlord later stated that she cannot say for sure whether KS and SS lived with petitioner. KS, SS, KMS and the landlord did not testify. Their statements are outweighed by the other credible evidence in the record of this matter

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to establish the following 2 Claims against petitioner for alleged overpayments of BC+ for the time period September 1, 2014 to December 31, 2015 in the total amount of \$6,570.00:

- (I) Claim Number [REDACTED]; September 1, 2014 to April 30, 2015; \$3,804.00; and,
- (II) Claim Number [REDACTED]; May 1, 2015 to December 31, 2015; \$2,766.00.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 31st day of March, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 31, 2016.

Marquette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability